

MISC. CIVIL APPLICATION NO.281 OF 1994
WITH
MISC. CRIMINAL APPLICATION NO.1656 OF 1994.

Date of decision: 13.3.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

and

The Honourable Mr. Justice H. R. Shelat

Mrs. Sangeeta Pahwa, advocate for petitioner.

Mr. Bharat T. Rao and Mr. Maulin R. Raval, advocates for
respondent Nos.1 and 2.

Mr. K.P. Raval, A.G.P. for respondent No.3.

1. Whether Reporters of Local Papers may be allowed
to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy
of judgment?
4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder?
5. Whether it is to be circulated to the Civil
Judge?

Coram: R.R.Jain & H.R. Shelat, JJ.

March 13, 1996.

Oral judgment (Per Jain, J.)

Petitioner, a teacher, alleging non-compliance of order
passed by the Gujarat Primary Education Tribunal in

Application No.268 of 1991 dated 17.8.1992, has filed Misc. Civil Application No.281 of 1994 requesting the Court to initiate appropriate proceedings against the respondents under the Contempt of Courts Act.

From the record it appears that during the pendency of this application, compromise was arrived at between the parties and the respondent school management agreed to reinstate and pay all backwages. In fulfillment of so-called agreement, the petitioner had reported for duty on 5.4.1994 at about 7 A.M. It is alleged that instead of allowing her to resume duties, she was illegally confined in one of the rooms and was physically assaulted by respondent No.2 and her aids and, therefore, the petitioner also filed Civil Application No.1307 of 1994 for initiating contempt proceedings against respondent No.1-Principal. At the time of hearing of civil application, vide order dated 5.4.1994, this court taking suo motu cognizance, converted the civil application into application for criminal contempt and issued Rule. By virtue of such order Civil Application No. 1307 of 1994 is converted into Misc. Criminal Application No.1656 of 1994. Since subject matter of both these applications is same and between the same parties, are disposed of by this common order.

While taking up these applications for effective hearing, Mrs. Sangeeta Pahwa, the learned advocate for the petitioner, states that the matter has been compromised between the parties out of Court and the petitioner has been paid by respondent Nos.1 and 2 lump-sum amount in lieu of her backwages and other claims. That the petitioner has already resigned and her resignation has been accepted completing all other formalities. Since the matter has been compromised between the parties out of Court at the outset we think not to exhume the ill-feelings, which have already been buried by way of compromise, as would be in the larger interest of parties. Apart from this fact, the non-compliance is alleged of the order passed by the Gujarat Primary Education Tribunal in Application No.268 of 1981 dated 17.8.1992. From the record it appears that in past also alleging non-compliance of order, contempt proceedings were also initiated being Misc. Civil Application No.846 of 1993 and was not pursued as due compliance was assured by respondents. The order passed by the Gujarat Primary Education Tribunal was to be implemented immediately meaning thereby immediately after 17.8.1992. If the allegations about contempt by way of non-compliance are accepted, then the non-compliance shall be deemed to have been committed on the very next day, that is, 18.8.1992

and, therefore, the contempt proceedings should have been initiated within one year as required under law. Since contempt proceedings are initiated on 3.3.1994, in our view, the application is barred by Section 20 of the Contempt of Courts Act and cannot be entertained.

We have carefully gone through the affidavit in reply filed by respondents in Misc. Criminal Application No.1656 of 1994 wherein it is stated that in implementation of order of the Tribunal, the petitioner was reinstated and was also paid her dues and thereafter on her own she did not report for duties. We do not find any affidavit in rejoinder challenging this statement and, therefore, said contents shall be deemed to have been admitted by the petitioner. Once if the petitioner has been reinstated in compliance of Tribunal's order then the order stands complied with in its letter and spirit and any subsequent development gives a fresh cause of action. Even if assuming that after reporting she has not been allowed to continue cannot be said to be non-compliance of the order in question which has already been implemented and, therefore, in our view, on facts it cannot be said that the respondents No.1 and 2 have deliberately and wilfully disobeyed the Tribunal's order.

Alleging mounting of assault when the petitioner reported for duty in compliance of order, suo motu criminal proceeding has been initiated for criminal contempt. On perusal of record, it appears that referring to the same incident both the parties i.e., petitioner and respondent Nos.1 and 2, have made allegations about assault on each other and in support thereof have also produced medical evidence. In light of rival allegations about assault it is difficult to ascertain as to who is the aggressor and who has beaten whom.

Be it as it may. The alleged incident has nothing to do with Court proceedings. It is an event purely giving rise to personal wrong and consequent right, if any.. Neither it has been done during the course of Court proceedings nor amounts to scandalizing the Court proceedings and, therefore, it is difficult to hold that the alleged act amounts to criminal contempt.

Our attention is also drawn to proviso to Section 10 of the Contempt of Courts Act which provides that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. The alleged act of assault by the respondents independently constitutes offence and is

punishable under IPC and, therefore, also no contempt proceeding can be initiated.

In view of this fact, contempt proceedings are required to be dropped. Both the applications are, therefore, dismissed. Rule is discharged with no order as to costs.